

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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STEPHEN R. KERN,

Plaintiff,

vs.

CLARK COUNTY SHERIFF, et al.,

Defendants.

2:13-cv-00855-RFB-NJK

ORDER

Pending before the Court is Plaintiff's Motion to Extend Time for Service (Docket No. 44) filed on December 18, 2015. Plaintiff's motion requests an unspecified additional amount of time to serve process on Defendant Peggy Martinez.

Plaintiff initially filed the instant case on May 15, 2013. Docket No. 1. He filed his amended application for leave to proceed *in forma pauperis* on August 6, 2013. On August 12, 2013, the Court granted Plaintiff's application for leave to proceed *in forma pauperis* and screened his complaint. Docket No. 9. The Court dismissed Plaintiff's complaint with leave to amend. *Id.*

On October 11, 2013, Plaintiff filed an amended complaint. Docket No. 14. On May 5, 2014, the Court screened Plaintiff's amended complaint and allowed it to proceed only on Counts I and II against Defendant Martinez and one other defendant.¹ Docket No. 16. On May 6, 2014, a summons was issued for Defendant Martinez. Docket No. 17. On March 25, 2015, the United

¹Some of the timeline events discussed in this order relate to the other defendant as well. As the other defendant is not relevant to the instant motion, however, the Court discusses only Defendant Martinez in this order.

1 States Marshal Service filed a notice with the Court that it had not served the summons and
2 complaint on Defendant Martinez because the address Plaintiff provided for her was incorrect, and
3 the Las Vegas Metropolitan Police Department (LVMPD) would not accept service on her behalf
4 as she was a contracted employee. Docket No. 26.

5 On March 25, 2015, the Court issued a notice of intent to dismiss, as the amended complaint
6 had not been served, and set the dismissal deadline for April 24, 2015. Docket No. 27. On April
7 1, 2015, Plaintiff filed a motion to extend time. Docket No. 28. On April 7, 2015, the Court
8 extended Plaintiff's time to serve Defendant until August 24, 2015. Docket No. 29. On April 27,
9 2015, Plaintiff filed a notice he received from the United States Marshal Service indicating that it
10 was unable to serve Defendant Martinez. Docket No. 30. On July 22, 2015, Plaintiff filed a motion
11 requesting assistance in serving Defendant Martinez. Docket No. 31. The Court granted Plaintiff's
12 motion on July 30, 2015, and ordered LVMPD to file a notice indicating whether it would accept
13 service for Defendant Martinez and, if not, indicating under seal her last-known address. Docket No.
14 32. The Court also extended the time for service to October 23, 2015. *Id.*

15 On August 13, 2015, LVMPD filed a notice indicating that it does not accept service for
16 Defendant Martinez, and that it is unable to provide her last-known address, as she had never been
17 an LVMPD employee. Docket No. 33. On August 14, 2015, Plaintiff filed a letter that he received
18 from The Corporation Trust Company of Nevada, indicating that Defendant Martinez is not listed
19 on its records or on the records of the State of Nevada. Docket No. 34.

20 On September 3, 2015, Plaintiff filed a motion for assistance in serving Defendant Martinez.
21 Docket No. 36. On October 16, 2015, the Court granted Plaintiff's motion. Docket No. 39. The
22 Court ordered LVMPD to file a notice advising of the name and last-known address of the food
23 service provider at the Clark County Detention Center. *Id.* at 3. The Court ordered the Clerk of
24 Court to issue summons on Defendant Martinez and deliver that summons to the United States
25 Marshal Service, and ordered the Marshal Service to attempt service of the summons and amended
26 complaint on Defendant Martinez, and to then provide Plaintiff with a Form USM-285 indicating
27 whether service was effected. *Id.* The Court further ordered Plaintiff to file those forms with the
28 Court, and extended the service date to December 22, 2015. *Id.*

On October 30, 2015, LVMPD filed a sealed notice in compliance with the Court's order. Docket No. 42. On December 8, 2015, a summons was issued for Defendant Martinez. Docket No. 43. On December 18, 2015, Plaintiff filed the instant motion, asking to extend time for service, as he had not yet received notice from the United States Marshal Service as to whether service had been effectuated. Docket No. 44. On December 24, 2015, the United States Marshal Service filed an unexecuted return of summons for Defendant Martinez, indicating that she does not reside or work at the given address. Docket No. 45.

Fed.R.Civ.P. 4(m) provides,

(m) *Time Limit for Service*. If a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f) or 4(j)(1).

Here, although Plaintiff's reason for asking for an extension of time for service is no longer at issue, as the United States Marshal Service has now represented that it could not serve Defendant Martinez, the Court finds that good cause nonetheless exists to extend the deadline to serve process on Defendant Martinez one final time.

Based on the foregoing, and good cause appearing therefore,

IT IS HEREBY ORDERED that Plaintiff's Motion to Extend Time for Service (Docket No. 44) is GRANTED. The deadline to serve summons and the amended complaint on Defendant Martinez is hereby extended to February 22, 2016. The Court is not inclined to grant any further requests for extension.

DATED this 6th day of January, 2016.



 NANCY J. KOPPE
 United States Magistrate Judge